

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001150-MR

JAMES VINCENT

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CI-00123

OHIO COUNTY SHERIFF ELVIS DOOLIN,
IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY AS OHIO COUNTY SHERIFF;
and OHIO COUNTY

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND VANMETER, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

VANMETER, JUDGE: This is an appeal from a summary judgment entered by the Ohio Circuit Court in favor of appellees in a case alleging that appellant James Vincent was wrongfully discharged, without a hearing, from his employment as a deputy sheriff. As we disagree, we affirm.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Vincent became employed in 1999 as a full-time deputy sheriff with the Ohio County Sheriff's Office. Because the office participated in the Kentucky Law Enforcement Foundation Program Fund (KLEFP),² Vincent was a recipient of KLEFP funds.

Vincent was fired from his employment on June 15, 2001, purportedly for violating office policies and procedures. It is undisputed that he was not afforded a due process hearing after his termination. Vincent then filed the action below, asserting in part that his due process and KRS 15.520 statutory rights were violated when he was fired without the hearing afforded KLEFP participants by KRS 15.520. Eventually, relying on the language of KRS 70.030(4), the trial court granted summary judgment in favor of appellees. This appeal followed.

KLEFP was enacted in 1972 to assist, strengthen and upgrade local law enforcement.³ Although the definition of "police officers" eligible for KLEFP participation originally did not include sheriffs or deputy sheriffs,⁴ that definition was amended in 1998 to add sheriffs and full-time deputy sheriffs. Further, the definition of "local unit of government" was amended to include county sheriffs' offices.⁵

² KRS 15.410 - KRS 15.510.

³ KRS 15.410.

⁴ KRS 15.420(2).

⁵ KRS 15.420(1).

Before 1998, KRS 70.030(1) clearly permitted sheriffs to appoint deputy sheriffs as at-will employees unless prohibited by local deputy sheriff merit board provisions. Vincent asserts, however, that the 1998 amendment to KRS 15.420(2), adding sheriffs and full-time deputy sheriffs to the list of those who are eligible for participation in KLEFP, necessarily had the result of providing to deputy sheriff participants the same KRS 15.520 due process and hearing rights afforded to other KLEFP participants charged with wrongdoing.⁶ Further, he relies on Kentucky caselaw and Attorney General opinions⁷ which have confirmed that police officers employed by KLEFP-funded police departments may be removed only after hearings which comply with KRS 15.520.

Although Vincent's arguments seem meritorious at first glance, they do not survive a close examination. The 1998 amendment to KRS 15.420(2) must be examined in light of the General Assembly's simultaneous enactment of KRS 70.030(4), which provides:

A sheriff's office may, upon the written request of the sheriff, participate in the Kentucky Law Enforcement Foundation Program fund authorized by KRS 15.410 to 15.510 without the county establishing a deputy sheriff merit board. This subsection shall not prohibit the sheriff from requesting the

⁶ KRS 15.520(4).

⁷ See *City of Munfordville v. Sheldon*, 977 S.W.2d 497 (Ky. 1998); OAG 83-114; OAG 81-133; OAG 81-132.

consolidated local government or the fiscal court to establish a deputy sheriff merit board. (Emphasis added.)

Vincent has cited, and we have found, no comparable statutes pertaining to police departments. Contrary to Vincent's argument, KRS 70.030(4) clearly is intended to provide local county governments with the option of either providing or not providing merit board protections to deputy sheriffs. If such a board has not been established within a particular county, it must be concluded that deputy sheriffs in that county continue to be hired under KRS 70.030(1) as at-will employees. Indeed, to hold otherwise would render meaningless the phrase "without the county establishing a deputy sheriff merit board,"⁸ thereby violating the well-established rule that conflicting statutes or sections thereof shall be interpreted, where possible, in order to give effect to all sections of the statutes.⁹

The trial court's summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John H. McCracken
Bowling Green, Kentucky

BRIEF FOR APPELLEES:

Marvin P. Nunley
Owensboro, Kentucky

⁸ KRS 70.030(4).

⁹ See, e.g., *Commonwealth v. Halsell*, 934 S.W.2d 552 (Ky. 1996); *Ledford v. Faulkner*, 661 S.W.2d 475 (Ky. 1983).